

October 22, 2008

**DECISION AND ORDER  
OFFICE OF HEARINGS AND APPEALS**

**Application for Exception**

Name of Case: Van Hoy Oil Co., Inc.

Date of Filing: September 23, 2008

Case No.: TEE-0055

On September 23, 2008, Van Hoy Oil Co., Inc. (Van Hoy) filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). The firm requests that it be permanently relieved of the requirement to prepare and file the Energy Information Administration (EIA) Form EIA-782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." As explained below, we have determined that Van Hoy's request should be granted in part.

*I. Background*

The DOE's Energy Information Administration (EIA) is authorized to collect, analyze, and disseminate energy data and other information.<sup>1</sup> The EIA-782B reporting requirement grew out of the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress determined that the lack of reliable information concerning the supply, demand and prices of petroleum products impeded the nation's ability to respond to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products. This information is used to analyze trends within petroleum markets. Summaries of the information and the analyses are reported by EIA in publications such as "Petroleum Marketing Monthly." This information is used by Congress and state governments to project trends and to formulate national and state energy policies. Access to this data is vital to the nation's ability to anticipate and respond to potential energy shortages.<sup>2</sup>

Form EIA-782B is a monthly report, pursuant to which resellers and retailers report the volume and price of sales of motor gasoline, No. 2 distillates, propane, and residual fuel oil. In order to

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<sup>1</sup> 15 U.S.C. § 772(b); 42 U.S.C. § 7135(b).

<sup>2</sup> See H.R. Rep. NO. 373, 96<sup>th</sup> Con., 1st Sess., reprinted in 1979 U.S. Code Cong. & Admin. News 1764, 1781 (H.R. Report 373).

minimize the reporting burden, the EIA periodically selects a relatively small sample of companies to file Form EIA-782B<sup>3</sup> and permits reporting firms to rely on reasonable estimates.<sup>4</sup>

## II. Exception Criteria

OHA has the authority to grant exception relief where the reporting requirement causes a “serious hardship, gross inequity or unfair distribution of burdens.”<sup>5</sup> Since all reporting firms are burdened to some extent by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms.

When considering a request for exception relief, we must weigh the firm’s difficulty in complying with the reporting requirement against the nation’s need for reliable energy data. Thus, mere inconvenience does not constitute a hardship warranting relief.<sup>6</sup> Similarly, the fact that a firm is relatively small or has filed reports for a number of years does not constitute a hardship warranting relief.<sup>7</sup> If firms of all sizes, both large and small, are not included in the survey, the estimates and projections generated by EIA’s statistical sample will be unreliable.<sup>8</sup>

OHA has granted relief from the reporting requirement under various circumstances. For example, we have granted relief where: the firm’s financial situation is so precarious that the additional burden of meeting the DOE reporting requirements threatens the firm’s continued viability;<sup>9</sup> the firm’s only employee capable of preparing the report is ill and the firm cannot afford to hire outside help;<sup>10</sup> extreme or unusual circumstances disrupt a firm’s activities;<sup>11</sup> or, a combination of factors resulting from unavoidable circumstances makes completing the form impracticable.<sup>12</sup>

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<sup>3</sup> Firms that account for over five percent of the sales of any particular product in a state or do business in four or more states, designated as certainty firms, are always included in the sample of firms required to file the form. A random sample of other firms is also selected. This random sample changes approximately every 24 to 30 months, but a firm may be reselected for subsequent samples. A firm that has been included in three consecutive random samples will generally not be included in a fourth consecutive sample, but may be included in a later sample.

<sup>4</sup> Form EIA-782B requires that the firm make a good faith effort to provide reasonably accurate information that is consistent with the accounting records maintained by the firm. The firm must alert the EIA if the estimates are later found to be materially different from actual data.

<sup>5</sup> 42 U.S.C. § 7194; 10 C.F.R. § 1003.25(b) (2).

<sup>6</sup> *Glenn Wagoner Oil Co.*, 16 DOE ¶ 81,024 (1987).

<sup>7</sup> *Mulgrew Oil Co.*, 20 DOE ¶ 81,009 (1990).

<sup>8</sup> *Id.*

<sup>9</sup> *Mico Oil Co.*, 23 DOE ¶ 81,105 (1994) (firm lost one million dollars over previous three years); *Deaton Oil Co.*, 16 DOE 81,206 (1987) (firm in bankruptcy).

<sup>10</sup> *S&S Oil & Propane Co.*, 21 DOE ¶ 81,006 (1991) (owner being treated for cancer); *Midstream Fuel Serv.*, 24 DOE 81,203 (1994) (three month extension of time to file reports granted when two office employees simultaneously on maternity leave); *Eastern Petroleum Corp.*, 14 DOE ¶ 81,011 (1986) (two month extension granted when computer operator broke wrist).

<sup>11</sup> *Little River Village Campground, Inc.*, 24 DOE ¶ 81,033 (1994) (five months relief because of flood); *Utilities Bd. of Citronelle-Gas*, 4 DOE ¶ 81,025 (1979) (hurricane); *Meier Oil Serv.* 14 DOE ¶ 81,004 (1986) (three month extension granted where disruptions caused by installation of new computer system left the firm’s records inaccessible).

<sup>12</sup> *Ward Oil Co.*, 24 DOE ¶ 81,002 (1994) (ten month extension granted where long illness and death of a partner resulted in personnel shortages, financial difficulties and other administrative problems).

### *III. The Application for Exception*

Van Hoy is a retailer of petroleum products based in Knightstown, Indiana. Van Hoy is a noncertainty firm that has consistently reported since January 2002, and has been selected for the last two samples.<sup>13</sup> The firm states that it has reduced its staff as a result of declining sales in its retail market.<sup>14</sup> Van Hoy has been forced to eliminate the position of the accountant who was responsible for completing form EIA-782B. Due to the economic situation, the firm's scope of work has changed and the owner is trying to refocus the business to make it more efficient. They have completed the form once a month for seven years, but now must use very limited personnel resources to remain viable despite the loss of customers.<sup>15</sup> Van Hoy maintains that it is difficult to compile the data for the form due to its staffing limitations and requests that it be permanently relieved of the obligation to file form EIA-782B.

### *IV. Analysis*

Upon careful examination of Van Hoy's Application for Exception, we have determined that temporary exception relief is warranted. The firm has experienced a major decrease in sales and personnel, and a shift in the focus and operations of its business. Considering the public interest in the information obtained from Van Hoy Oil's EIA-782B form, however, we do not believe that the firm should be relieved of the obligation to file form EIA-782B indefinitely. Accordingly, we have determined that a temporary exception through April 2009 should be granted.<sup>16</sup>

It Is Therefore Ordered That:

- (1) The Application for Exception filed by Van Hoy Oil co., Inc., Case No., TEE-0055, be, and hereby is, granted as set forth in paragraph (2) below and denied in all other respects.
- (2) Van Hoy Oil Co., Inc. is relieved of the requirement to file form EIA-782B for the months November 2008 through April 2009.
- (3) To the extent that the Application is denied, administrative review of this Decision and Order may be sought by any persons aggrieved or adversely affected by the denial of exception relief. Such review shall be commenced by filing a petition for

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<sup>13</sup> See Electronic Mail Message from Tammy Heppner, EIA, to Valerie Vance Adeyeye, OHA (September 25, 2008).

<sup>14</sup> See Memorandum of Telephone Conversation between Jeff Van Hoy, Van Hoy Oil Co., and Valerie Vance Adeyeye, OHA (October 8, 2008).

<sup>15</sup> *Id.*

<sup>16</sup> See *Meier Oil Serv.*, 14 DOE ¶ 81,004 (1986); *Ward Oil Co.*, 24 DOE ¶ 81,002 (1994).

review with the Federal Energy Regulatory Commission within 30 days of the date of this Decision and Order pursuant to 18 C.F.R. Part 385, Subpart J.

Poli A. Marmolejos  
Director  
Office of Hearings and Appeals

Date: October 22, 2008